BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR

IN THE MATTER OF W.P No 4033 /2004

PETITIONER:

SANTOSH KUMAR ASATI
S/O LATE SHRI GAYAPRASAD
AGED 42 YEARS,
SUB ENGINEER (UNDER SUSPENSION) RES (PMGSY)
BILASPUR,
R/O F-4, PARIJAT COLONY,
NEHRU NAGAR, AMERI RD.
BILASPUR (C.G)

P.R. No. 4082/04 Presented by ... dated 20-10-04

VERSUS

1. STATE OF CHHATTISGARH
THROUGH THE SECRETARY
TO THE DEPARTMENT
OF PANCHAYAT AND RURAL
WELFARE, DKS MANTRALAYA
BHAVAN G.E. ROAD,
RAIPUR (C.G.).

2. DEVELOPMENT COMISSIONER,
PANCHAYAT & GRAMIN
VIKAS VIBHAG,
RAIPUR (C.G)

RESPONDENTS:

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT/ORDER OR DIRECTION AS DEEMED FIT

MAY IT PLEASE YOUR LORDSHIP

1.PARTICULARS OF THE PETITIONER:

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(54)

आदेश पत्रक

मामला क्रमांक W.P.4033/ सन् 2004

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

20-4-2005

On a mention being made, the case is taken up for hearing.

Mr. Pradeep Saksena, counsel for the petitioner.

Mr. Sandeep Dubey, Govt. Advocate for the State/respondents.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the propriety of the decision of the respondents not to reinstate the petitioner, and recalling the suspension order dated 28-10-2002 even after the acquittal of the petitioner by the Additional District Judge, Bilaspur vide his judgment dated 29th December, 2003 in a case under the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act').

Brief facts leading to filing of this writ petition are that at the relevant time the petitioner was working as Sub Engineer in the Rural Engineering Services at Bilaspur when a prosecution was launched against the petitioner for the commission of offence under Sections 7 & 13 (1) (d) read with Section 13 (2) of the Act for taking bribe of Rs.7,000/- from Shyamlal on 21-5-2001. On account of the prosecution of the petitioner in the said offence the competent authority placed the petitioner under suspension vide order dated 28-10-2002. However, after completion of trial, the learned Special Judge, Bilaspur, vide his judgment dated 29-12-2003 acquitted the petitioner holding that it has not been proved that the accused as a public servant has made any demand for money and received money as a result of which no criminal misconduct of the accused has been proved. Accordingly, the petitioner was acquitted. Thereafter, the petitioner moved the Secretary and the Development Commissioner for reinstatement, however, the petitioner has not been reinstated on the ground that the State Government has preferred an appeal against the judgment of acquittal dated 29-12-2003.

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The petitioner's case is that such a decision of the respondents is contrary to the law. When the petitioner has been acquitted, the respondents are bound to reinstate the petitioner. Mere filing of the appeal is not sufficient for keeping the petitioner under suspension. The petitioner has also prayed for full back wages and also the consequential benefits.

Return has been filed on behalf of the State/respondents in which it has been mentioned that since appeal has been filed against the acquittal, therefore, the petitioner is not entitled for reinstatement.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submitted that after acquittal the petitioner is entitled for reinstatement as well as full back wages, and also the consequential benefits.

On the other hand, Mr. Sandeep Dubey, learned Govt. Advocate for the State of Chhattisgarh argued that as the State Government has already preferred an appeal against the acquittal before the High Court and until that appeal is decided the petitioner is not entitled for reinstatement. He further referred to the State Government's circular dated 15-12-1979 and argued that even after acquittal the petitioner is not entitled for reinstatement as the appeal has been preferred.

Having heard learned counsel for the parties, I have perused the record. It is not disputed that the petitioner has been acquitted from the charges under Sections 7 & 13 (1) (d) read with Section 13 (2) of the Act. It is also not disputed that for that misconduct no departmental enquiry has been initiated or pending against the petitioner. The only defence taken by the State Government/respondents is that appeal has been preferred against the order of acquittal.

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..... **विरुद्ध** .....

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In my considered opinion mere preferring an appeal against acquittal is not a ground for keeping the petitioner under continuous suspension. Once the petitioner is acquitted from the criminal case and no departmental enquiry has been initiated against him for the misconduct, then the petitioner is entitled for reinstatement.

For this view I am supported by the judgment of Calcutta High Court reported in **1993 II L.L.J. 844 (Om Prakash Kapoor vs. Union of India and others)**. Facts of that case were that the CBI after investigation launched criminal prosecution against the petitioner and as a consequence of that the petitioner was suspended, thereafter, the petitioner was discharged by the Special Court as no evidence was produced by the CBI, but the petitioner was not reinstated, then he approached the High Court under the writ jurisdiction and the High Court held that

> "The order of suspension made pending criminal investigation came to an end with the discharge of the petitioner. Therefore the order of suspension is set aside and the management is directed to pay full salary including all arrears to the petitioner after deduction of the subsistence allowance paid."

Similar view has been taken by Gujarat High Court in the matter of **Mukeshkumar Premshanker Joshi v. State of Gujarat and another** reported in **2004 LAB.I.C. 271**, in which the Court held that where the accused has been acquitted and no departmental enquiry is pending against him in that view of the matter there is absolutely no justifiable reason for the Department not to reinstate the petitioner by revoking the suspension order. Similar view has also been taken by this Court in the matter of **Banwari Lal Shrivastava vs. State of M.P. and another** in W.P.No.1220/2001, decided on 14-7-2004, reported in **2004 (4) M.P.H.T. 53 (CG)**.

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Therefore, mere filing an appeal against the judgment of trial Court is no ground for continuation of the suspension order unless the appeal is allowed and the petitioner is convicted. Since prosecution was launched against the petitioner in connection with the discharge of his duties and the petitioner has been acquitted, therefore, I am of the opinion that the petitioner is also entitled for full back wages and consequential benefits, of course after deducting the subsistence allowance and other allowances already paid to him.

In the result, this writ petition is allowed and the respondents are directed to consider the reinstatement of the petitioner as also the payment of full back wages and other consequential benefits after deducting the amount of subsistence allowance already paid to the petitioner.

In view of this order, M.(W.)P.No.4428/2004 stands disposed of.

Sd/-
L.C.BHADOO
Judge

Soma

(पीछे देखिये)